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Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Iowa Telecom Petition for Forbearance Under 47 U.S.C. 160(c) from the Universal Service High-Cost Loop Support Mechanisms, WC Docket No. 05-337

Dear Ms. Dortch:

Iowa Telecommunications Services, Inc. ("Iowa Telecom") is a rural telephone company seeking forbearance of certain Federal Communications Commission ("FCC" or "Commission") rules that adversely impact rural subscribers in Iowa Telecom's territory.[1] These rules are slowing needed investment in telecommunications infrastructure and the provision of basic local telecommunications service, and forbearance from these rules would benefit rural telecommunications subscribers.

Despite the clear benefits that granting Iowa Telecom's petition would bring to Iowa consumers, certain state public utility commissions submitted letters in the above-referenced docket objecting to Iowa Telecom's Petition.[2] Iowa Telecom does not believe that the PUC Letters, filed nearly a year after the public record has been completed, should affect the FCC's consideration of the Petition; they contain no evidence or new argument that has not already been fully addressed in the public record, nor do they address the fact that Iowa Telecom has demonstrated that it

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1 *See* Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanisms, WC. Dkt. No. 05-337 (May 8, 2006) ("Petition"). Although I refer throughout only to the Petition, Iowa Telecom also filed simultaneously with the Petition, a waiver petition justifying the relief sought as well. *See* Iowa Telecom Petition for Interim Waiver of the Commission's Universal Service High-Cost Loop Support Mechanisms, WC. Dkt. No. 05-337 (May 8, 2006).

2 *See* Letter from Shana Knutson, Legal Counsel, Nebraska Public Service Commission, *et al.* to Marlene Dortch, Secretary, FCC, WC Docket No. 05-337 (May 31, 2007); Letter from John A. Garner, Chief Administrative Law Judge, Alabama Public Service Commission to Marlene Dortch, Secretary, FCC, WC Docket No. 05-337 (May 31, 2007); Letter from Nielsen Cochran, Chairman, Mississippi Public Service Commission, *et al.* to Marlene Dortch, Secretary, FCC, WC Docket No. 05-337 (May 31, 2007) (collectively referred to as "PUC Letters").

meets the forbearance test contained in Section 10 of the Communications Act.[3] Instead, the focus of the PUC Letters appears to be concern that their respective states would lose universal service subsidies if Iowa Telecom's Petition were granted.[4] Given the lack of record evidence that there will be any harm to universal service, coupled with concrete consumer benefits in Iowa, the Commission should grant the forbearance requested by Iowa Telecom, as fully justified in Iowa Telecom's filings in this docket.[5]

I. The State Commissions Have Not Demonstrated that Universal Service Funding Reductions in Their States Would Lead to a Violation of Section 254.

The state commissions allege that granting Iowa Telecom's Petition will "make support insufficient for the non-rural carriers that currently receive USF funds under the non-rural mechanism."[6] However, the commissions summarily draw this conclusion from the simple fact that funding in some states will be modestly reduced. The commissions do not provide any evidence that the adjustments to non-rural high cost loop funding in these states resulting from Iowa Telecom's Petition would actually result in a violation of Section 254. The

3 47 U.S.C. § 160 (2006).

4 The state commission's concern about the relatively modest adjustments that would be occasioned by adding Iowa Telecom's lines to the non-rural high cost loop mechanism fails to recognize that the results are caused by the non-rural mechanism itself and do happen today when any adjustments are made to carrier-filed line numbers. Because each carrier's study area costs would necessarily change with each filing of new line counts, and the support received does vary from year to year, the state commission's pleas that certain carriers would receive less money is relatively hollow. Furthermore, if the FCC believes that no states' non-rural funding should be reduced as a result of granting Iowa Telecom's forbearance petition, existing hold harmless provisions could be applied to ameliorate the effect on other states. *See* 47 C.F.R. § 54.311.

5 As discussed in greater detail in Iowa Telecom's Petition, forbearance is appropriate because: (1) the manner in which fund eligibility is determined has no direct impact on the reasonableness of end-user rates and use of the forward-looking costing methodology will help Iowa Telecom maintain just and reasonable rates long-term; (2) the use of embedded cost to determine Iowa Telecom's high-cost loop support is not necessary to protect consumers; and (3) grant of this petition would serve the public interest by ensuring that Iowa Telecom can continue needed investment in its network facilities. *See* Petition at 4-8.

6 PUC Letter at 3.

nationwide adjustment is minimal, being less than 0.2 percent of the ILEC portion of the universal service fund.

Given this lack of evidence, the Commission should not give credence to the state commissions' argument that the issues in the *Qwest II* remand will be more difficult to resolve if forbearance is granted.[7] Iowa Telecom wholeheartedly agrees that the *Qwest II* remand issues should be decided expeditiously. However, the Commission cannot lawfully decline to rule on Iowa Telecom's Petition because of that pending rulemaking because the requirements of Section 10 are clearly satisfied in this case.[8] Contrary to the state commissions' claims, granting the Petition will neither harm universal service policy nor prejudge the outcome of either the remand proceeding or universal service reform. In particular, the Commission should not delay grant of needed and justified universal service relief simply because other, more global, proposals are pending before the Commission. Moreover, no harmful precedent will be set. Though the state commissions' speculate that "many more claims" would be filed,[9] Iowa Telecom's claim is quite limited since it has the unique characteristic of being regulated as a price cap carrier at both the state and federal levels, which limits the class of carriers who could utilize any precedent set by granting the forbearance petition.

II. Iowa Telecom Adequately Explained in Its Petition for Forbearance Why the Requested Relief Was Essential to Rationalize the Regulatory Schemes that Apply to It.

In its Petition, Iowa Telecom explained that its status as the only purely price-cap rural ILEC adversely affects its efforts to improve infrastructure and advance universal service. The state commissions wrongly claim, however, that "Iowa Telecom has never satisfactorily explained why the manner in which its rates are set has any bearing on how its federal universal service support should be calculated" and that there is no reason to make regulation consistent in these two

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[7] PUC Letter at 4.

[8] *See AT&T Corp. v.* FCC, 236 F.3d 729, 738 (D.C. Cir. 2001) (finding that the Commission "has no authority to sweep [a forbearance petition] away by mere reference to another, very different, regulatory mechanism"); 47 U.S.C. § 160(c) (deeming forbearance petitions granted if the Commission fails to act within a year and allowing for an extension of up to three months).

[9] PUC Letter at 7-8.

areas.[10] The state commissions focus almost exclusively on the potential loss of non-rural support and seem to ignore many of Iowa Telecom's arguments set forth in the Petition and fail to rebut the evidence that these two regulatory regimes have similar and compatible purposes.[11] Because the amount of funds received from subscribers in the form of rates and USF from the federal government are integrally related to the operations and efficiency of service and infrastructure development, the state commissions' argument should be rejected.

The differences between rate-of-return and embedded cost mechanisms, on the one hand, and price cap and forward-looking methodologies on the other, produce real variation in the way that costs are recovered and incentives are produced. The FCC repeatedly emphasized these differences when it adopted price cap and forward-looking economic cost ("FLEC") methodologies. For example, when price cap regulation was adopted, the Commission noted that price caps "create a regulatory environment that requires carriers to become more productive,"[12] while rate-of-return regulation "produce[s] inefficiencies."[13] The Commission later noted that it "adopted LEC price cap regulation in 1990 because it found that rate-of-return regulation did not create adequate efficiency incentives for incumbent LECs."[14] Similarly, when the Commission adopted the FLEC methodology, it noted that the use of FLEC would serve the similar goals of "send[ing] the correct signals for entry, investment, and innovation."[15] The state

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[10] PUC Letter at 4.

[11] Petition, Appendix at 9-12.

[12] *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, ¶ 22 (1990).

[13] *Id.* at ¶ 28.

[14] *Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 12 FCC Rcd 16642, ¶ 3 (1997).

[15] *Federal-State Joint Board On Universal Service*, Report and Order, 12 FCC Rcd 8776, 8899 (¶ 224)("Universal Service Report and Order"). Other universal service programs like Interstate Access Support and Interstate Common Line Support are based on the carrier's status as a price cap or rate-of-return carrier. *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd

commissions' flat assertion that there is no connection between different rate-setting methodologies and universal service mechanisms simply ignores more than a decade of FCC precedent.[16] And although these precedents recognize that price cap and FLEC methodologies may burden certain types of carriers, which undermines imposition of these regimes to all carriers, the FCC's clear preference is for the incentive-producing components in price cap and FLEC methodologies where the disadvantages do not exist.

Thus, price cap regulation and FLEC methodologies both are designed to motivate carriers to plan investment efficiently that will bring costs within the caps set by regulation. Indeed, FLEC was adopted because it "best approximates the costs that would be incurred by an efficient carrier in the market."[17] The efficient planning and buildout required to function under price caps and the FLEC methodology are exactly the type of planning and buildout that Iowa Telecom is undertaking because the properties it operates were historically under-invested and require significant upgrading and rebuilding.[18]

Furthermore, the state commissions' argument that Iowa Telecom's incentives to invest will be reduced if universal service support is calculated under the FLEC formula is illogical and self-contradictory. As noted above, the Commission itself has found that the use of FLEC encourages innovation and investment. Moreover, the argument by state commissions that increased USF support has led to greater investment by rural carriers using the rural mechanism, if true, should hold true for Iowa Telecom under the non-rural mechanism.[19] The state

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19613, ¶ 129 (2001).

[16] State commissions also appear to argue that it is also irrelevant that there are different rate-setting methodologies between the state and federal jurisdictions. This claim is incorrect for the same reasons stated above but is completely irrelevant to Iowa Telecom. Although it is true that different regulatory schemes between federal and some state jurisdictions remain, Iowa Telecom is regulated pursuant to price cap mechanisms at both the state and federal levels.

[17] Universal Service Report and Order, 12 FCC Rcd at 8899 (¶ 224).

[18] Iowa Telecom notes these infrastructure development efforts in its Petition. Petition at 13-15.

[19] PUC Letter at 7 (noting that "incentives created by the High Cost Loop program have actually been a major factor driving broadband and even fiber deployment").

commissions thus cannot be correct in claiming that the non-rural mechanism produces a disincentive to invest for Iowa Telecom.

III. Granting Iowa Telecom's Forbearance Petition Will Clearly Advance Universal Service in Iowa.

Allowing Iowa Telecom to receive universal service support under the FLEC methodology will clearly advance universal service in the company's service territory in Iowa. The state commissions try to cloud the issue by stating that "[u]sing forward-looking costs is not a goal of Section 254."[20] However, Iowa Telecom never argued that the use of FLEC in and of itself was a goal of Section 254; rather, it argued that promoting investment in rural America would ensure access to modern telecommunications at reasonable prices, a clear goal of Section 254, and that the requested relief would promote that investment. As Iowa Telecom showed in detail in its Petition, because of the historic under-investment in Iowa prior to Iowa Telecom's purchase, infrastructure in Iowa is insufficient to keep pace with modern telecommunications needs. Despite Iowa Telecom's efforts, with current revenues, planned infrastructure upgrades are being delayed well into the future.[21]

Iowa Telecom cannot remedy this problem by raising rates because its rates are already high relative to other rural areas and are close to the national average for even urban areas. As Iowa Telecom showed in its Petition, it already raised retail rates significantly in 2004[22] and further rate increases could jeopardize the affordability of telecommunications service and have a negative impact on subscribership. Thus, further support is necessary in order to ensure that the goals of universal service are met in Iowa.

The state commissions are incorrect that the Commission has abandoned FLEC. In its Ninth Report and Order on Universal Service, the Commission adopted the FLEC model for non-rural carriers, but deferred decision on FLEC for

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20 PUC Letter at 5.

21 Petition, Appendix at 13-17.

22 Petition, Appendix at 14.

rural carriers.[23] The Commission repeated its intention to adopt FLEC for rural carriers in the Rural Task Force proceeding[24] and in its referral of issues raised in that proceeding to the Joint Board.[25] Industry commenters have repeated the need for the Commission to adopt FLEC for at least certain classes of rural carriers.[26] And while it is true that the Commission has not updated the model since 2004, this does not mean that the Commission has abandoned this model. Even if the Commission eventually adopts an entirely new funding mechanism, something which is not at all clear today, FLEC will continue to be used during the interim period, which could be months or even years.

Finally, the state commissions are also wrong that Iowa Telecom has made no commitments regarding its use of universal service funds. Iowa Telecom has shown a consistent dedication to improving the telecommunications infrastructure in its territory, has provided the Commission with a summary of planned technological improvements,[27] and noted in its reply comments that it is "committed to the statutory requirement that all high-cost support be used 'only for the provision, maintenance, and upgrading of facilities and services for which support is intended.'"[28] Iowa Telecom stands ready, willing and able to explain this information to the Commission if allowed to do so under appropriate confidentiality protection given the sensitive nature of future marketing and build out plans.

The PUC Letters fail to provide any evidence that the grant of the Iowa Telecom Petition is not in the public interest. For all of the reasons stated in that

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23 *Federal-State Joint Board on Universal Service*, Ninth Report & Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, ¶ 11 (1999).

24 *Federal-State Joint Board on Universal Service*, Fourteenth Report and Order, 16 FCC Rcd 11244, ¶ 6 (2001)(indicating that "rural carriers would shift gradually to a forward-looking economic cost methodology").

25 *Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 11538, ¶ 4 (2004).

26 *See* Comments of Verizon, CC Docket No. 96-45, 8-13 (proposing that carriers with more than 100,000 lines in a state use the forward-looking cost methodology); Letter from Eric Einhorn, Windstream Communications to Commissioner Deborah Tate, FCC and Commissioner Ray Baum, State Chair, Federal-State Joint Board on Universal Service, at 4-6 (Apr. 2, 2007).

27 Petition, Appendix at 14-15.

28 Reply Comments of Iowa Telecom at 18.

Petition, Iowa Telecom's reply comments, and this letter, the Commission should grant the relief requested by Iowa Telecom's Petition.

Sincerely,

/s/ Mimi Weyforth Dawson
Mimi W. Dawson
Consultant

Cc: Chairman Kevin J. Martin
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Thomas Navin
Jeremy Marcus
Amy Bender
Jennifer McKee